

MINUTES
REGULAR MEETING OF THE NEWTON CITY COUNCIL
MARCH 15, 2011 – 7:00 P.M.

The regular meeting of the Newton City Council was held on Tuesday, March 15, 2011 at 7:00 p.m. in the Council Chambers at City Hall

PRESENT: Mayor Robert A. Mullinax, Mayor Pro Tem Anne Stedman, and Council Members Robert C. Abernethy, Jr., Wayne Dellinger, Mary Bess Lawing, Tom Rowe, and Bill Lutz.

STAFF: City Manager Todd Clark, City Attorney Larry Pitts, City Clerk Amy S. Falowski, City Department Heads, and members of the Management Team.

ITEM 1: CALL TO ORDER – MAYOR ROBERT A. MULLINAX:

Mayor Robert A. Mullinax welcomed everyone, and called the meeting to order.

ITEM 2: OPENING – COUNCIL MEMBER ROBERT C. ABERNETHY, JR.

Council Member Robert C. Abernethy, Jr. provided the invocation, and led the Pledge of Allegiance.

ITEM 3: APPROVAL OF MINUTES FROM THE MARCH 1, 2011 REGULAR MEETING:

Upon motion duly made by Council Member Robert C. Abernethy, Jr., seconded by Council Member Bill Lutz, it was unanimously RESOLVED:

That the Minutes of the March 1, 2011 Regular City Council meeting be – APPROVED.

ITEM 4: CONSIDERATION OF CONSENT AGENDA ITEMS:

Upon motion duly made by Council Member Mary Bess Lawing, seconded by Mayor Pro Tem Anne Stedman, it was unanimously RESOLVED:

That Consent Agenda be – APPROVED.

- A. **Consideration of work session on April 5 at 6:00 p.m. to discuss Water/Sewer Rate structure**
- B. **Sewer Adjustments – February 15, 2011 – The following Sewer Adjustments are recommended for approval.**

Account Number	Name	Service Address	Adjustment Period	Amount of Adjustment
37000800-003	Yvan Agreda	123 W 21 st St	Jan	101.37
13000840-001	Apple Tree Apts/ Laundry	206 W D St	Jan	26.51
43001460-002	April Hendrix	1305 Oak Hill Dr	Nov-Dec	44.58
3000220-005	Jennifer Kirkhuff	708 S. Brady Ave.	Jan	16.97

C. Consideration of Beunice R. (Bootsie) Roberts for appointment to the Appearance Commission

D. Consideration of Arbor Day Proclamation

(Proclamation is hereby referenced and on file in the office of the City Clerk)

5. COMMENTS FROM THE PUBLIC: (PERSONS WANTING TO MAKE A PUBLIC COMMENT ON NON-AGENDA ITEMS ARE REQUESTED TO SIGN IN WITH THE CITY CLERK PRIOR TO THE MEETING):

Mayor Robert A. Mullinax asked if there was anyone present that would like to make any comments concerning non-agenda items. No one appeared.

6. PUBLIC HEARING:

A. Zoning Ordinance Text Amendment #2011-01 Auction Houses

Planner Max Sigler stated that The Planning Commission is requesting the approval of a Zoning Ordinance Text Amendment that would establish Auction Houses as a permitted use within the B-3 Central Business District and the B-4 General Business Districts.

Mr. Sigler explained that currently, Auction Houses are not defined nor are they listed as a permitted use in the zoning ordinance. The question of allowing Auction Houses as permitted use was considered by the Newton Planning Commission in 2002. The staff was asked at that time to prepare an ordinance amendment and report back to the Planning Commission. Due to the lack of interest on the part of the individual making the original inquiry, the effort to prepare the amendment halted and was not discussed at any following Planning Commission meetings. Mr. Sigler stated that the proposed amendment would create a definition and establish the zoning districts where Auction Houses would be a permitted use.

Mayor Mullinax opened the Public Hearing, as scheduled and advertised, and asked if there was anyone present that would like to speak in favor of or against the proposed Zoning Ordinance text amendment.

Reverend Paul Fitzpatrick, of Holy Cross Lutheran Church, asked if the new auction businesses would be required to do anything on the outside of the building to benefit the area. He stated that he didn't feel like many people would visit the business if the outside was not presentable. Mr. Sigler stated that appearance regulations would be the same as for any business.

Mayor Mullinax asked if there was anyone else present that would like to speak. No one appeared and Mayor Mullinax CLOSED the Public Hearing.

After some discussion among the City Council it was unanimously RESOLVED:

That Ordinance 2011-7 – Zoning Ordinance Text Amendment #2011-01 – Auction Houses be –
ADOPTED.

(Ordinance 2011-7 is hereby referenced and on file in the office of the City Clerk)

ORDINANCE NO. 2011-7
AN ORDINANCE AMENDING CHAPTER 102
“ZONING”

OF THE CITY CODE OF THE CITY OF NEWTON, NORTH CAROLINA

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF NEWTON, NORTH CAROLINA
THAT:

Section 1:

Chapter 102, “Zoning” of the City Code of the City of Newton shall be amended by adding the definition of “Auction House” in Section 102-7 to read as follows:

Auction House means an indoor place of business offering for sale or resale art, antiques, jewelry, pottery, porcelain, and similar goods which are owned by the owner/operator or have been placed there by consignment for normal business sales, and which periodically holds auctions on the premises for the purpose of selling said goods to the highest bidder at public auction.

Section 2:

Chapter 102, “Zoning” of the City Code of the City of Newton shall be amended by adding to the existing Section 102-201 Table 4-1 “Auction House” as permitted use in the B-3 Central Business District and B-4 General Business District to read as follows:

Use	B-3	B-4
MISCELLANEOUS		
Auction House	X	X

Section 3:

This Ordinance shall become effective from and after the date of its adoption.

Adopted this the 15th day of March, 2011.

B. Zoning Ordinance Text Amendment #2011-02 Tattoo Parlors

Assistant Planning Director Alex Fulbright stated that Margaret and Jonathan Landers have intentions to purchase property zoned B-3 Central Business District as a location to operate a tattoo parlor. Currently, tattoo parlors are not listed as permitted use nor is it defined by the ordinance. Consideration of a new permitted use involves two issues; the definition and the proper/appropriate zoning district for the use. Mr. Fulbright explained that tattooing permits are required for anyone who engages in the activity of tattooing, as defined in General Statute 130A-283. The North Carolina Administrative Code specifies the technical standards that the tattooing permit holder is required to meet. The permit is specific to the individuals and their location, so that only a permit holder can engage in tattooing at the location in which they are permitted.

Mr. Fulbright stated that tattooing is permitted in the City of Hickory, the City of Conover, and Catawba County. In addition, tattooing is a permitted use in the Central Business Districts of both Conover and Hickory.

Mr. Fulbright explained that the proposed location is the B-3 Central Business District, and is intended to be applied to the traditional commercial, financial, governmental and administrative core area of the city, commonly known as the central business district. He stated that the B-3 district is further intended to establish regulations that provide and preserve this area as a center for commercial, financial professional, governmental and cultural activities.

Mr. Fulbright provided Council with an opinion of the Federal 9th Court of Appeals which states that the display of tattoos and the practice of tattooing are “forms of pure expression fully protected by the First Amendment.” Mr. Fulbright also stated that according to Richard Ducker, an associate professor of Public Law and Government at the University Of North Carolina School Of Government, the relevance of the Federal Court’s opinion for municipalities in North Carolina is that the prohibition of tattooing, if challenged, would likely be found unconstitutional.

Mr. Fulbright stated that it is the recommendation of the Planning Commission that City Council approve this text amendment which would add the definition of “Tattoo Parlor” in Section 102-7, Chapter 102 of the City Code and provide for Tattoo Parlors to be listed as permitted use in the B-3 Zoning District.

Mayor Mullinax opened the Public Hearing, as scheduled and advertised, and asked if there was anyone present that would like to speak in favor of or against the proposed Zoning Ordinance text Amendment.

Margaret Landers, of 428 N. Main Ave., stated that she would like to buy property in the B-3 district to operate a tattoo parlor and art gallery. Ms. Landers stated that her gallery would display art such as pottery, painting, and photography. She stated that tattooing is not only an art form, but also her greatest source of income. Ms. Landers explained that she has a successful business in Hickory, but that she lives in Newton and would love for her business to be in Newton also.

Mayor Mullinax expressed concern that after many years of careful planning by the City Council, he would like to be very cautious before amending the code to allow tattoo parlors in the B-3 District.

Council Member Robert C. Abernethy, Jr. questioned the location of the proposed tattoo parlor. Ms. Lander explained that the building she has in mind is 4 blocks from her home and that the layout is good for her business. Council Member Abernethy stated that his biggest concern is how citizens will perceive a tattoo parlor in downtown Newton.

Mayor Pro-Tem Anne Stedman stated that her mother has shown art in Ms. Landers’ gallery in Hickory and she hopes that Ms. Landers would coordinate her gallery hours with other downtown businesses that promote art work. Mayor Pro-Tem Stedman also stated that she would like to create a very vibrant downtown and that tattooing has become mainstream.

Council Member Wayne Dellinger stated that he would have imagined a business such as this going into the B-4 district instead of the B-3 district. He also expressed concern that other tattoo parlors would come into the city and not have the same quality of business as Ms. Landers. Ms. Landers stated that she did not think that there would be a rush of people coming to downtown Newton to open a tattoo parlor.

Mayor Mullinax explained to Ms. Landers that the decision is not a personal one, but one that is in the interest of the City of Newton.

Reverend Paul Fitzpatrick, of Holy Cross Lutheran Church, stated that he would like to be assured that no one under age would be allowed to purchase a tattoo. Ms. Landers stated that there are strict state and county requirements, and that everyone would be required to show I.D. and that records would be kept of all tattoos sold.

Mayor Mullinax asked if there was anyone else present that would like to speak. No one appeared and Mayor Mullinax CLOSED the Public Hearing.

Upon motion duly made by Mayor Pro-Tem Anne Stedman, seconded by Council Member Robert C. Abernethy, Jr., and with Council Member Wayne Dellinger voting against, and Council Members Rowe, Lawing and Lutz voting in favor of, it was RESOLVED:

That Ordinance 2011-8 – Zoning Ordinance Text Amendment #2011-02 – Tattoo Parlors be –
ADOPTED.

(Ordinance 2011-8 is hereby referenced and on file in the office of the City Clerk)

ORDINANCE NO. 2011-8
AN ORDINANCE AMENDING CHAPTER 102
“ZONING”

OF THE CITY CODE OF THE CITY OF NEWTON, NORTH CAROLINA

—BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF NEWTON, NORTH CAROLINA THAT:

Section 1:

—Chapter 102, “Zoning” of the City Code of the City of Newton shall be amended by adding the definition of “Tattoo Parlor” in Section 102-7 to read as follows:

Tattoo Parlor, means an establishment where tattooing, as defined in G.S. 130A-283 is practiced. Tattooing of individuals younger than 18 is not permitted.

Section 2:

—Chapter 102, “Zoning” of the City Code of the City of Newton shall be amended by adding to the existing Section 102-201 Table 4-1 “Tattoo Parlor” as permitted use in the B-3 Central Business District to read as follows:

Use	B-3
MISCELLANEOUS SERVICES	
Tattoo Parlor	X

Section 3:

—This Ordinance shall become effective from and after the date of its adoption.

—Adopted this the 15th day of March, 2011.

7. NEW BUSINESS:

A. Consideration of Award of Bid for 24kv Conversion Project

Public Works Director Wilce Martin stated that the conversion of the Newton 30+ year old 4kv electric system to a new 24kv system has been funded by previous borrowing and the funds are available in the electric utility fund. Southeastern Consulting Engineers (SCE), the city’s electrical consultant, has designed the 4kv project conversion.

Southeastern Consulting Engineers sent a request for bid proposals to 6 firms for the Southeastern Newton 4kv Electric Conversion Project. Five of six bid proposals requested were received at the Newton Public Works and Utilities offices on Thursday, March 3, 2011 and are as follows:

1, Mas Tec North America, Inc. of Roxboro, NC	\$234,490.30
2. Pike Electric of Mt. Airy, NC	\$242,009.39
3. Williams Electric of Shelby, NC	\$246,781.15

4. Lee Electric of Aberdeen, NC	\$301,351.96
5. E & R, Inc. of Kinston, NC	\$303,200.00
6. Davis Elliot of Roanoke, Virginia	No bid

Southeastern Consulting Engineers and City Staff recommend that the City Council consider awarding the bid for the 4kv Conversion Project to Mas Tec North America.

Upon motion duly made by Council Member Tom Rowe, seconded by Council Member Mary Bess Lawing, it was unanimously RESOLVED:

That Bid Award for the 24kv Conversion Project to Mas Tec North America, in the amount of \$234,490.30 be – APPROVED.

8. CITY MANAGER’S REPORT:

City Manager Todd Clark reported on the following:

- N Ashe culvert project nearly complete, should be finished by end of week if weather permits
Two other culvert projects to follow in next couple of weeks
- Water Tank update – Negotiations between Suncom, T-Mobile and AT&T caused the project to be behind schedule
- Retirement Luncheon for Bob Eury to be held on March 31, at 11:30 at the Public Works Facility

9. QUESTIONS AND COMMENTS FROM MAYOR AND COUNCIL:

Mayor Pro Tem Anne Stedman mention that the Teen Leadership Newton program had begun with approximately 10 students from Newton-Conover High School, and 10 students from the Newton-Conover Health Science High School.

10 ADJOURNMENT:

Upon motion duly made by Council Member Wayne Dellinger, seconded by Council Member Robert C. Abernethy, Jr., the meeting was RECESSED - until 6:00 p.m. on April 5, 2011 - at 8:10 p.m.

Robert A. Mullinax, Mayor

Amy S. Falowski, City Clerk